IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2456 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

BARODA CENTRAL CONSUMERS CO-OPERATIVE SOC LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2456 of 1997

M/S THAKKAR ASSOC. for Petitioner No. 1

MS VYAS, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/09/2002

ORAL JUDGEMENT

#. The petitioner is a cooperative society, which is distributing cooking gas in Baroda City. The said society is also distributing the LPG in the whole Baroda City. It is averred in the petition that, four members of the society are from the Government and the audit is being carried out by the Government. It is also averred that the petitioner is having more than 42000 consumers. The petitioner is supplying 900 to 1200 gas cylinders

every day. It is averred in the petition that the petitioner society has not committed any single mistake in the last 30 years.

#. The District Supply Officer - respondent No.3 herein issued the show cause notice on 4.1.1994 for the purpose of cancelling the licence on the ground that the petitioner has committed certain irregularities as indicated in the show cause notice. It was found that, 300 gas cylinders were in excess. The gas refill book did not show the date of delivery; the bill book is not legible, and, therefore, the distribution is not as per the serial number; the stock register is not signed by the Manager; the godown is not being used. The petitioner, therefore, gave reply to the said show cause notice. The District Supply Officer, thereafter, dropped the proceedings so far as it relates to the cancellation of the licence. However, it was found that there was irregularity as regards 300 gas cylinders and that the defence, which was raised by the petitioner that the said quantity arrived later on, was not found to be proper. It is also found that, in the booking register, it is not mentioned as to when the refill is being provided to the customers and that the stock register was also not properly stamped and signed with good hand writing. It was also found that the godown in question was not used by the petitioner society and the petitioner was negligent in not informing the authority about the said fact. Accordingly, the said irregularities were found to have been proved and it was ordered that the amount of Rs.750/- from the amount of deposit be confiscated to the State.

#. So far as the aforesaid order is concerned, Mr.Pahwa fairly stated that, he is not challenging the same. Thereafter, the Collector initiated proceedings under section 6-A of the Essential Commodities Act for the purpose of confiscating 300 gas cylinders, which were found in excess and, which were not found to have been registered in the register. The Collector, ultimately, passed the order of confiscating the 162 gas cylinders to the State. The value of the said seized goods comes to Rs.96400/- and the petitioner was asked to deposit the said amount with the department concerned. The said order was challenged by the petitioner by way of appeal before the State Government. The said order was confirmed by the State Government and the petitioner has challenged the said decision by way of this petition.

#. At the time of hearing of this petition, it is argued by Mr.Pahwa that the petitioner is a cooperative society

and the past record of the society is absolutely unblemished. He further submitted that, so far as the finding of the authority about 300 excess gas cylinders is concerned, the said finding is not correct, as, according to Mr.Pahwa, the petitioner has received the said consignment on 4.12.1993 from the Indian Oil Corporation and for which he has placed reliance on delivery challan, which is at page 42. It is submitted that, therefore, the aforesaid consignment was received by the petitioner on 4.12.1999. However, the truck of the Indian Oil Corporation came on the previous evening, i.e. on 3.12.1993, but since the physical delivery was not handed over and since the truck was lying at the site, the said material was not shown in the account books on the previous day, but it was subsequently shown on the next day. He submitted that the petitioner could not produce necessary material at the time of hearing of the proceedings before the State Government. He submitted that, even otherwise, this was a technical mistake, and, therefore, some liberal view is required to be taken in the matter of inflicting the penalty. Mr.Pahwa has placed reliance on the judgment of the Supreme Court reported in AIR 1994 SC 2663, to substantiate his say that, if there is a technical breach, it should not result in the confiscation of the goods.

#. I have heard Mr.Pahwa, learned advocate, for the petitioner as well as Ms.Vyas, learned AGP, for the respondents.

#. It is, no doubt, true that the authorities have given cogent reasons for coming to the conclusion that the petitioner has committed irregularities so far as 300 gas gas cylinders are concerned. However, considering the fact that the petitioner is a cooperative society, wherein 4 Government nominees are on board, and considering the fact that the petitioner has tried to give some justification by relying on page 42, i.e. delivery challan, in my view, instead of deciding these aspects, i.e. whether the document at page 42 justifies the say of the petitioner, or, whether there was any mens rea on the part of the petitioner, it would be just and proper to remand the matter to the State Government to reconsider, whether there was a mens rea on the part of the petitioner society or, whether it is an act of mere omission or negligence. The State Government may consider the documentary evidence produced by the petitioner at page 42 and may arrive at a fresh decision in this connection, including the quantum of the penalty. The matter is accordingly sent back to the State

Government for reconsidering the issue and the State Government may take appropriate decision after hearing the petitioner. It is clarified that, it is for the State Government to take appropriate decision again, as indicated above, and this Court has not expressed any opinion on merits of the case one way or the other. At the time of taking the decision, the State Government may also consider, whether the judgment of the Apex Court, which is being relied upon by the petitioner as above, is applicable to the facts of the present case and all these points may be decided by the State Government after hearing the petitioner and appropriate order may be passed in accordance with law.

#. The petition is accordingly allowed to the aforesaid extent. The order of the State Government at Annexure-G is quashed and set aside. The matter is sent back to the State Government for fresh decision again in accordance with law. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)